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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/726,028	11/30/2000	Henry J. Molintas	82,493	9981

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Office of Counsel Code 004  
Naval Surface Warfare Center  
Carderock Division Headquarters  
9500 MacArthur Boulevard  
West Bethesda, MD 20817-5700

EXAMINER

MANOHARAN, VIRGINIA

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 12/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/726,028

Applicant(s)

MOLINTAS, HENRY J.

Examiner

Virginia Manoharan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☒ Claim(s) 6-9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

The newly submitted claim 10 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claim 10 is a method claim as opposed to the apparatus claims 1-9, and is being presented for the first time. The inventions (apparatus and process) are separate and distinct each from the other because of the following reasons: Claim 10 and claims 1-9 are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either (1) the process as claimed can be practiced by another and materially different process [MPEP 806.05(e)]. In this case, the process as claimed can be practiced by another materially different apparatus such as: e.g., a processing system which utilize ultrafiltration membranes as described . at page 1, lines 7-9 of the specification. Because these inventions are distinct; and because the complete search required for claims 1-9 are not required for claim 10, restriction for examination purposes as indicated is proper. Since applicant has received an action on the merits for the originally presented invention (apparatus); this invention has been constructively elected by its original presentation for prosecution on the merits. Accordingly, claim 10 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142 (b) and MPEP 821.03.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The claimed "a single flash chamber" in claim 1 is not positively recited in the specification.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kowalski (3,730,848).

Kowalski is applied for the same reasons as set forth at pages 2-3 of the previous office action.

Claims 2 – 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kowalski as applied to claim1 above, and further in view of Miller (4,525,243).

Miller is applied for the same reasons as set forth at page 3 of the previous office action.

Claims 6-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's arguments filed July 29, 2003 have been fully considered but they are not persuasive because of the following reasons:

However, the "comprising" of claim 1 is an all-inclusive term, and would encompass the plurality of flash chambers of the Kowalski patent as well as the argued "single flash chamber" of the claimed invention. It would be within the purview of an artisan to omit extra flash chambers, when not needed. Furthermore, and contrary to applicant's assertion, the Miller patent is relevant to the extent that the distillation device

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is utilized under reduced pressure. The Miller patent is also applied to show that the used of the pressure responsive control means and vacuum pumps in a distillation apparatus is not an unobvious subject matter nor is it evidence of criticality in the art.

The arguments with respect to Williamson are moot since this alternative reference has been dropped from the above rejection.

Thus, in the absence of anything, which may be "new" or unexpected result, a prima facie case of obviousness has been reasonably established by the art and has not been rebutted.

Unexpected results must be established by factual evidence. Mere arguments or conclusory statements in the specification, applicant's amendments, or the Brief do not suffice. In re Linder, 457 F.2d 506, 508, 173 USPQ 356, 358 (CCPA 1972). In re Wood, 582, F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Virginia Manoharan whose telephone number is 703-308-3844. The examiner can normally be reached on Tuesday-Friday from 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 703-308-4311. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

V. Manoharan/lap  
December 4, 2003

  
VIRGINIA MANOHARAN  
PRIMARY EXAMINER  
ART UNIT 128 (760)  
12/4/03